

House Study Bill 176

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL
BY CHAIRPERSON LYKAM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to public intoxication by using or consuming a
2 controlled substance or by inhaling or consuming an inhalant
3 and making a penalty applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1578HC 83
6 jm/rj/8

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1 1 Section 1. Section 123.46, Code 2009, is amended to read
1 2 as follows:
1 3 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES ==
1 4 NOTIFICATIONS == CHEMICAL TESTS == ~~EXONERATION~~ EXPUNGED
1 5 RECORD.
1 6 1. As used in this section, unless the context otherwise
1 7 requires:
1 8 a. "Arrest" means the same as defined in section 804.5 and
1 9 includes taking into custody pursuant to section 232.19.
1 10 b. "Chemical test" means a test of a person's blood,
1 11 breath, or urine to determine the percentage of alcohol
1 12 present by a qualified person using devices and methods
1 13 approved by the commissioner of public safety.
1 14 c. "Controlled substance" means a substance or compound
1 15 listed in section 124.204 or 124.206.
1 16 d. "Expunged" means the segregation of a court's criminal
1 17 record with reference to a violation of this section in an
1 18 area or database which is secured from public access.
1 19 e. "Inhalant" means any substance which, if inhaled,
1 20 causes intoxication.
1 21 ~~e. f.~~ "Peace officer" means the same as defined in section
1 22 801.4.
1 23 ~~d. g.~~ "School" means a public or private school or that
1 24 portion of a public or private school which provides teaching
1 25 for any grade from kindergarten through grade twelve.
1 26 2. a. A person shall not use or consume alcoholic liquor,
1 27 wine, or beer upon the public streets or highways. A person
1 28 shall not use or consume alcoholic liquor in any public place
1 29 except premises covered by a liquor control license. A person
1 30 shall not possess or consume alcoholic liquors, wine, or beer
1 31 on public school property or while attending a public or
1 32 private school-related function. A person shall not be
1 33 intoxicated ~~or simulate intoxication~~ in a public place. A
1 34 person violating this subsection is guilty of a simple
1 35 misdemeanor.
2 1 ~~3. b. When If~~ a peace officer arrests a person on a
2 2 charge of public intoxication under this section when
2 3 intoxication by alcohol is alleged, the peace officer shall
2 4 inform the person that the person may have a chemical test
2 5 administered at the person's own expense. If a device
2 6 approved by the commissioner of public safety for testing a
2 7 sample of a person's breath to determine the person's blood
2 8 alcohol concentration is available, that is the only test that
2 9 need be offered the person arrested. In a prosecution for
2 10 public intoxication pursuant to this subsection, evidence of
2 11 the results of a chemical test performed under this subsection
2 12 is admissible upon proof of a proper foundation. The
2 13 percentage of alcohol present in a person's blood, breath, or
2 14 urine established by the results of a chemical test performed
2 15 within two hours after the person's arrest on a charge of
2 16 public intoxication is presumed to be the percentage of
2 17 alcohol present at the time of arrest.

2 18 3. a. A person shall not use or consume a controlled
2 19 substance or intentionally inhale or consume an inhalant upon
2 20 the public streets or highways. A person shall not use or
2 21 consume a controlled substance or intentionally inhale or
2 22 consume an inhalant in a public place. A person shall not be
2 23 intoxicated by a controlled substance or by intentional
2 24 inhalation or consumption of an inhalant in a public place. A
2 25 person violating this subsection is guilty of a simple
2 26 misdemeanor.

2 27 b. If a peace officer arrests a person on a charge of
2 28 public intoxication under this section when intoxication by a
2 29 controlled substance or inhalant is alleged, the peace officer
2 30 shall inform the person that the person may have a chemical
2 31 test of the person's blood or urine administered at the
2 32 person's own expense. In a prosecution for public
2 33 intoxication pursuant to this subsection, evidence of the
2 34 results of a chemical test performed under this subsection is
2 35 admissible upon proof of a proper foundation. The percentage
3 1 of a controlled substance or inhalant present in a person's
3 2 blood or urine established by the results of a chemical test
3 3 performed within two hours after the person's arrest on a
3 4 charge of public intoxication is presumed to be the percentage
3 5 of a controlled substance or inhalant present at the time of
3 6 arrest.

3 7 4. a. A peace officer shall make a reasonable effort to
3 8 identify a person under the age of eighteen who violates this
3 9 section and, if the person is not referred to juvenile court,
3 10 the law enforcement agency of which the peace officer is an
3 11 employee shall make a reasonable attempt to notify the
3 12 person's custodial parent or legal guardian of the violation,
3 13 whether or not the person is taken into custody, unless the
3 14 officer has reasonable grounds to believe that notification is
3 15 not in the best interests of the person or will endanger that
3 16 person.

3 17 b. The peace officer shall also make a reasonable effort
3 18 to identify the elementary or secondary school which the
3 19 person attends if the person is enrolled in elementary or
3 20 secondary school and to notify the superintendent or the
3 21 superintendent's designee of the school which the person
3 22 attends, or the authorities in charge of the nonpublic school
3 23 which the person attends, of the violation. If the person is
3 24 taken into custody, the peace officer shall notify a juvenile
3 25 court officer who shall make a reasonable effort to identify
3 26 the elementary or secondary school the person attends, if any,
3 27 and to notify the superintendent of the school district or the
3 28 superintendent's designee, or the authorities in charge of the
3 29 nonpublic school, of the violation. A reasonable attempt to
3 30 notify the person includes, but is not limited to, a telephone
3 31 call or notice by first-class mail.

3 32 5. a. Upon the expiration of two years following
3 33 conviction for a violation of this section, a person may
3 34 petition the court to ~~exonerate the person~~ expunge the record
3 35 of the conviction, and if the person has had no other criminal
4 1 convictions, other than simple misdemeanor violations of
4 2 chapter 321 during the two-year period, ~~the person shall be~~
4 3 ~~deemed exonerated of the offense as a matter of law~~ the record
4 4 of conviction shall be expunged. The court shall ~~enter an~~
4 5 ~~order exonerating the person of the conviction, and ordering~~
4 6 ~~that the record of the conviction be expunged by the clerk of~~
4 7 ~~the district court.~~

4 8 b. An expunged record is a confidential record unavailable
4 9 for examination and copying by members of the public.

4 10 6. A person does not commit a violation of subsection 4 if
4 11 the controlled substance, inhalant, or other substance used,
4 12 inhaled, or consumed, was prescribed for the person and was
4 13 used, inhaled, or consumed in accordance with the directions
4 14 of a practitioner as defined in section 155A.3 or if such
4 15 substance was dispensed by a pharmacist without a prescription
4 16 pursuant to the rules of the board of pharmacy.

4 17 Sec. 2. IMPLEMENTATION OF ACT. Section 25B.2, subsection
4 18 3, shall not apply to this Act.

4 19 EXPLANATION

4 20 This bill relates to public intoxication by using or
4 21 consuming a controlled substance or by inhaling or consuming
4 22 an inhalant and making a penalty applicable.

4 23 The bill defines "controlled substance" to mean a schedule
4 24 I or II substance or compound listed in Code section 124.204
4 25 or 124.206. The bill also defines "inhalant" to mean any
4 26 substance which, if inhaled, causes intoxication.

4 27 The bill provides that a person shall not use or consume a
4 28 controlled substance or intentionally inhale or consume an

4 29 inhalant upon the public streets or highways. The bill also
4 30 prohibits a person from using or consuming a controlled
4 31 substance or intentionally inhaling or consuming an inhalant
4 32 in a public place or being intoxicated by such a controlled
4 33 substance or inhalant in a public place. The bill requires a
4 34 peace officer to inform the person that the person may have a
4 35 chemical test of the person's blood or urine administered at
5 1 the person's own expense to determine the percentage of a
5 2 controlled substance or inhalant present in a person's blood
5 3 or urine.
5 4 The bill strikes a provision making it unlawful to simulate
5 5 intoxication in a public place.
5 6 The bill also provides that a person does not violate the
5 7 bill if the controlled substance, inhalant, or other substance
5 8 used, consumed, or inhaled, was prescribed for the person and
5 9 was used, consumed, or inhaled in accordance with the
5 10 directions of a medical practitioner as defined in Code
5 11 chapter 155A or if the substance was dispensed by a pharmacist
5 12 without a prescription pursuant to the rules of the board of
5 13 pharmacy.
5 14 The bill also changes provisions relating to expunging the
5 15 record of conviction for public intoxication after two years.
5 16 The bill defines "expunged" to mean the segregation of a
5 17 court's criminal record with reference to a public
5 18 intoxication violation in an area or database which is secured
5 19 from public access. Under the bill, two years after a
5 20 conviction for public intoxication a person may petition the
5 21 court to expunge the record of the conviction, and under some
5 22 circumstances the record or conviction may be expunged.
5 23 Currently, a person may petition the court to exonerate the
5 24 person and have the court enter an order exonerating the
5 25 person as a matter of law.
5 26 A person who violates the bill commits a simple
5 27 misdemeanor. A simple misdemeanor is punishable by
5 28 confinement for no more than 30 days or a fine of at least \$65
5 29 but not more than \$625 or by both.
5 30 The bill may include a state mandate as defined in Code
5 31 section 25B.3. The bill makes inapplicable Code section
5 32 25B.2, subsection 3, which would relieve a political
5 33 subdivision from complying with a state mandate if funding for
5 34 the cost of the state mandate is not provided or specified.
5 35 Therefore, political subdivisions are required to comply with
6 1 any state mandate included in the bill.
6 2 LSB 1578HC 83
6 3 jm/rj/8.1